

Please add the following claims:

107. A film structure comprising:

at least two layers wherein a first layer comprises a barrier material and further wherein a second layer comprises a blend of a copolymer of ethylene and a C₃-C₂₀ alpha olefin and low density polyethylene, wherein the copolymer is formed by the polymerization reaction with a single site catalyst.

108. A film structure comprising:

at least two layers wherein a first layer comprises a barrier material and further wherein a second layer comprises a blend of a copolymer of ethylene and a C₃-C₂₀ alpha olefin and a low density polyethylene, wherein the copolymer is formed by the polymerization reaction with a metallocene catalyst system.

REMARKS

The foregoing amendments have been submitted in response to an Office Action dated December 18, 2001 and pursuant to a Request for Continued Examination (RCE). In the Office Action, the Examiner rejected claims 1, 3, 7-8, 10-11, 13-15, 35-37, 41-44, 46-48, 98, 99, and 101 under 35 USC §102(e) as being anticipated by Hodgson et al. Further, claims 1, 3, 7, 8, 10-11, 13, 14, 16, 18, 35-37, 41-44, 46, 47, 49, and 51 were rejected under 35 USC §102(e) as being anticipated by Hodgson, Jr. Moreover, claims 1, 3, 7, 8, 10-14, 35, 37, 41, 42-47, and 98-106 were rejected under 35 USC §103(a) as being unpatentable over Evert et al. in view of Schut and further in view of Van der Sanden et al. Finally, claims 13 and 45 were rejected under 35 USC §103(a) as being unpatentable over Hodgson et al.

With respect to the rejection of the claims under 35 USC §102(e) as being anticipated by Hodgson et al., Applicants respectfully submit that the attached Rule 131 Declarations signed by each inventor overcome the rejection thereto. The attached Rule 131 Declarations clearly show that the claimed invention was conceived prior to September 16, 1992, the effective date of Hodgson et al. and was coupled with due diligence from prior to September 16, 1992 to a subsequent constructive reduction to practice on June 24, 1993, the filing date of U.S. Patent Application No. 08/082,226, which is the parent application to the present application. Therefore, Hodgson et al. cannot be used as a reference against the pending claims of the present invention under 35 USC §102(e).

With respect to the rejection of the claims under 35 USC §102(e) as being anticipated by Hodgson, Jr., this rejection is respectfully traversed in view of the claims as amended and for the reasons that follow.

More specifically, independent claims 1 and 35 have been amended to define film structures comprising at least two layers wherein a first layer comprises a barrier material selected from the group consisting of polyvinylidene chloride, polyvinylidene chloride copolymer, polyvinylidene-methyl acrylate copolymer, ethylene vinyl alcohol copolymer, nylon, and metal foil.

Hodgson, Jr., however, fails to disclose the film structures defined in amended independent claims 1 and 35. Under 35 USC §102, anticipation requires that a single prior art reference must disclose each and every element of the applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and prior art are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984). Since Hodgson, Jr., fails to disclose the elements in amended claims 1 and 35, the rejections thereto have been overcome and should be withdrawn.

Moreover, with respect to the rejection of the claims under 35 USC §103(a) as being unpatentable over Evert et al., Schut and further in view of Van der Sanden et al., Applicants have amended independent claims 1 and 35 to distinctly define the present invention over the art of record, taken alone or in combination.

More specifically, Evert et al. merely discloses a differentially cross-linked multilayer heat shrinkable film. The multilayer film contains at least two layers the inner of which is a heat sealable layer containing an antioxidant cross-linking inhibitor in an amount sufficient to inhibit the cross-linking of that layer by irradiation. In addition, Schut merely discloses the use of single-site catalysts to make polyethylenes. Still further, Van der Sanden et al. merely relates to improved heat seal properties via the use of the single site catalyzed polymer resins.

However, nowhere does Evert et al., Schut, or Van der Sanden et al. teach or disclose the elements of Applicants amended claims 1 and 35. More specifically, none of the references of record teach the novel and non-obvious combination of a film structure comprising at least two layers wherein a first layer comprises a barrier material selected from the group consisting of polyvinylidene chloride, polyvinylidene chloride copolymer, polyvinylidene chloride-methyl acrylate copolymer, ethylene vinyl alcohol copolymer, nylon,

and metal foil, and further wherein a second layer comprises a polymer formed by the polymerization reaction with a single site catalyst.

Claims 3, 7-8, 10-16, 18, and 98-106 depend from independent claim 1; claims 37, 41-49 and 51 depend from claim 35. These claims are further believed allowable over the references of record for the same reasons as set forth above with respect to their parent claims since each sets forth additional elements of Applicants' novel film structures.

Further, Applicants have added new claims 107 and 108. Applicants submit that claims 15 and 48 define subject matter that was rejected only for being anticipated by Hodgson et al. under 35 USC §102(e). However, the Rule 131 Declarations clearly show that Hodgson et al. cannot be used as a reference under 35 USC §102(e) against the claims of the pending application. Therefore, the rejection of claims 15 and 48 have been overcome and have been rewritten in independent form as newly added claims 107 and 108, including all of the limitations of any intervening claims. Applicants submit that newly added claims 107 and 108 are both novel and non-obvious over any of the art cited, taken singly or in combination. Further, the claims are clearly supported by the specification.

CONCLUSION

In view of the foregoing remarks and amendments, Applicants respectfully submit that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicants urge the Examiner to telephone Applicants' attorney so that the same may be resolved and the application expedited to issue. Applicants respectfully request the Examiner to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,

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MARKED UP VERSION TO SHOW CHANGES MADE

Please amend the claims as follows:

1. (Amended) A film structure comprising:

at least two layers wherein a first layer comprises a barrier material selected from the group consisting of polyvinylidene chloride, polyvinylidene chloride copolymer, polyvinylidene chloride-methyl acrylate copolymer, ethylene vinyl alcohol copolymer, nylon, and metal foil, and further wherein a second layer comprises a polymer formed by the polymerization reaction with a single site catalyst.

35. (Amended) A film structure comprising:

at least two layers wherein a first layer comprises a barrier material selected from the group consisting of polyvinylidene chloride, polyvinylidene chloride copolymer, polyvinylidene chloride-methyl acrylate copolymer, ethylene vinyl alcohol copolymer, nylon, and metal foil, and further wherein a second layer comprises a polymer formed by the polymerization reaction with a metallocene catalyst system.

Please add the following claims:

- 107. (New) A film structure comprising:

at least two layers wherein a first layer comprises a barrier material and further wherein a second layer comprises a blend of a copolymer of ethylene and a C₃-C₂₀ alpha olefin and low density polyethylene, wherein the copolymer is formed by the polymerization reaction with a single site catalyst.

108. (New) A film structure comprising:

at least two layers wherein a first layer comprises a barrier material and further wherein a second layer comprises a blend of a copolymer of ethylene and a C₃-C₂₀ alpha olefin and a low density polyethylene, wherein the copolymer is formed by the polymerization reaction with a metallocene catalyst system.--